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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
08 AT SEATTLE

09 ELDON HUFFINE,) CASE NO. C07-1502-RSM
10)
11 Plaintiff,)
12)
13 v.) REPORT AND RECOMMENDATION
14)
15 THOMAS OLSON, et al.,)
16)
17 Defendants.)
18)
19)
20)

21 Plaintiff is currently incarcerated at the Federal Detention Center in SeaTac, Washington.

22 He has submitted to this Court for review a civil rights complaint under 42 U.S.C. § 1983 and an
23 application for leave to proceed with this action *in forma pauperis*. Plaintiff asserts in his
24 complaint that the named defendants have conspired to deprive him of his right of access to the
25 courts of the State of Montana in violation of both the Montana and the United States
26 constitutions. (*See* Dkt. No. 1 at 1-2.) The eighteen named defendants are apparently all
27 employees of the State of Montana. (*See* Dkt. No. 5 at 1.)

28 It does not appear from plaintiff's papers that any of the events giving rise to his claims
29 occurred in the Western District of Washington. Moreover, it does not appear that any of the

01 named defendants reside in the Western District of Washington.¹ Accordingly, venue is not proper
02 in this District. *See* 28 U.S.C. § 1391(b). When a case is filed in the wrong district, the district
03 court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division
04 in which it could have been brought." 28 U.S.C. § 1406(a). In this Court's view, it would not be
05 in the interests of justice to transfer this action to the district in which it should have been brought;
06 *i.e.*, the District of Montana.

07 In order to sustain a civil rights action, a plaintiff must show (1) that he suffered a violation
08 of rights protected by the Constitution or created by federal statute, and (2) that the violation was
09 proximately caused by a person acting under color of state or federal law. *See Crumpton v. Gates*,
10 947 F.2d 1418, 1420 (9th Cir. 1991). To satisfy the second prong, a plaintiff must allege facts
11 showing how individually named defendants caused or personally participated in causing the harm
12 alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). While plaintiff
13 alleges that defendants have violated his state and federal constitutional rights, he offers no facts
14 whatsoever to support his claims. Given the conclusory nature of plaintiff's claims, and given
15 plaintiff's well documented history of filing frivolous actions in the District of Montana, *see In re*
16 *Seven Complaints Submitted by ELDON HUFFINE*, CV06-20-BU-DWM/CV06-11-H-DWM
17 (D. Mont. Mar. 30, 2006), dismissal, rather than transfer, is warranted here.

18 Accordingly, this Court recommends that this action be dismissed and that plaintiff's
19 application to proceed *in forma pauperis* be denied as moot. A proposed Order accompanies this
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21 _____
22 ¹ In fact, it appears likely that the reason plaintiff elected to file the instant action in this
District is to circumvent filing restrictions imposed upon him in the District of Montana.

01 Report and Recommendation.

02 DATED this 14th day of November, 2007.

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05 Mary Alice Theiler
United States Magistrate Judge

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